City of South Bend Council Meeting Via *Zoom* Monday, August 23, 2021 @ 5:30 pm

Zoom Link - https://us02web.zoom.us/j/83959213604?pwd=dFVnaGVPYjAyOStWQmwvT3QxOXhtZz09

- 1. Call to Order and Roll Call
- 2. Approval of Agenda and Consent Agenda
 - Approval of Minutes: August 9, 2021 Regular Meeting
- 3. Correspondence
- 4. Ordinance #1562 Amending SBMC 3.10 Utility Excise Tax (First Reading) (Action)
- 5. Ordinance #1563 Adding to Title 15 Parking of Recreational Vehicles and Boats, Siting of Cargo Containers & Semitrailers and Amending SBMC 15.08.040 Temporary Use Permits (First Reading) (Action)
- 6. Professional Services Agreement Creative Community Solutions (Action)
- 7. Items from the Public
- 8. Department Head Reports:
 - i) Police Chief Stigall
 - ii) City Supervisor Houk
 - iii) Clerk/Treasurer Roberts
- 9. Mayor's Report
- 10. Public Comments Current agenda Items
- 11. Council Comments
- 12. Future Agenda Topics
- 13. Adjournment

ORAL PUBLIC TESTIMONY

If you wish to provide oral public comments during the August 23, 2021 council meeting, please submit an email to <u>dee.roberts@southbend-wa.gov</u> containing the following information:

- 1. The Meeting Date
- 2. Your First and Last Name, Your City of Residence
- 3. The Agenda Items(s) that you would like to provide comment oral public comment on
- 4. The Telephone Number that you will be calling from Please note the information you provide may be subject to disclosure pursuant to Washington State's Public Record Act, chapter 42.56 RCW.

To join the Zoom web meeting:

Meeting ID: 839 5921 3604

Password: 960012 Dial-In Phone Number: 1-253-215-8782

Emailed requests to be added to our "Speakers List" must be received by 4:00 pm on August 23, 2021 and **MUST** include **ALL** of the above information. Any omitted information will render the request incomplete and will not be included for public comment during the meeting.

WRITTEN PUBLIC TESTIMONY

If you wish to provide written public comments during the August 23, 2021 council meeting, please email your comments to <u>dee.roberts@southbend-wa.gov</u> and include the following information with your comments:

- 1. The Meeting Date
- 2. Your First and Last Name, Your City of Residence
- 3. The Agenda Item(s) that you are speaking to.

The City of South Bend strives to provide access and services to all members of the public. Please notify the city at least 48 hours prior to an event if reasonable accommodations are needed.

NOTICE – All proceedings of this meeting are sound recorded Except Executive Sessions.

South Bend Council Meeting

Monday, August 23, 2021

CONSENT AGENDA

1. Approval of Vendor Checks

Vendors - Check #46833 thru Check #46856 - \$341,197.04 Including EFT Payments

8/23/2021

	0/23/2021	+		
	VENDOR		AMOUNT	
46833	911 Circuits	\$	558.00	Capital Outlay - Police Dept
46834	ALS Group USA, Corp	\$	30.00	Water Samples
EFT Pay	Bank of the Pacific - EFT Pay	\$	2,791.12	Funding Interest - Water Treatment Plant Upgrades - Funded by USDA RD
46835	Beans & Rocks, LLC	\$	1,290.71	Stockpile
46836	Bellandi Signs, Inc.	\$	5,945.50	Cheney Park Sign
46837	Cascade Columbia Distribution Company	\$	513.30	Operating Supplies - Water Fund
46838	Coast Controls & Automation, Inc.	\$	10,269.50	Repair/Maintenance - Sewer
46839	Dilk Tire Factory	\$	902.70	Repair/Maintenance - Police \$20.00, Streets/Water/Sewer \$882.70
46840	Gerald Ashley	\$	54.13	LEOFF 1 Benefits
46841	Grays Harbor County Dept of Public Services	\$	120.00	Water Samples
46842	HB Portables/Willapa Portables	\$	200.00	Sani Cans - Boat Launch
46843	iSpyFire, Inc.	\$	540.50	Annual Software Renewal - Fire Dept
46844	Jonathan Quittner	\$	775.00	Municipal Court Public Defender - August 2021
46845	Killian Dunkeson	\$	900.00	Municipal Court Prosecutor - August 2021
46846	LeMay Mobile Shredding	\$	52.50	Document Shredding
46847	McClure and Sons, Inc.	\$	312,602.43	WTP Main Project - CDBG and USDA RD Funded
46848	Pioneer Grocery	\$	119.50	Miscellaneous - Police Dept
46849	Ryan Herco Flow Solutions	\$	1,751.38	Repair/Maintenance - Water Fund
46850	South Bend Utilities	\$	30.00	Refund - Overpayment Property Sold
46851	Steve's Front End & Brake, Inc	\$	392.59	Repair/Maintenance - Streets
46852	Traffic Safety Supply	\$	688.73	Operating Supplies - Streets
46853	VWR International LLC	\$	123.76	Operating Supplies - Water Fund
46854	Walter E Nelson Co of Astoria	\$	204.57	Operating Supplies - Parks
46855	Washington Department of Corrections	\$	159.62	Operating Supplies - Fire Dept
46856	Willapa Harbor Herald	\$	181.50	Legal Notices
•	TOTAL	\$	341,197.04	

CITY OF SOUTH BEND ZOOM COUNCIL MEETING - 08/09/2021

1. CALL TO ORDER AND ROLL CALL

The council meeting was called to order by Mayor Struck at 5:30 pm. Followed by roll call by Clerk/Treasurer Roberts. Members present: Councilor Kuiken, Councilor Manlow, Councilor Neve, Councilor Davis, Councilor Hall, Police Chief Stigall, City Supervisor Houk and Clerk/Treasurer Roberts.

2. APPROVAL OF AGENDA, CONSENT AGENDA AND APPROVAL OF MINUTES

A motion was made by Councilor Neve to approve the Agenda, the Consent Agenda and the minutes of the July 26, 2021 regular meeting. The motion was seconded by Councilor Hall. **Vote: Ayes-5, Noes-Ø, Absent-Ø**

Vendors – Check #46806 thru Check #46832 - <u>\$74,037.17</u> Including EFT Payments Check #46508 VQIDED & Replaced with Check #46805

Payroll _ Check #24961 thru Check #24967 - \$125,196.02 including Direct Deposit

3. CORRESPONDENCE - NONE

4. ITEMS FROM THE PUBLIC

Citizen Linda Buchanan (212 S Jackson) ask if a Children at Play" sign could be placed on Cowlitz between Harrison & S Jackson Street. City Supervisor Houk advised he would take care of it.

5. DEPARTMENT HEAD REPORTS

- Police Chief Stigall noted that he has begun purchasing items for the new police car that the city will be purchasing with the USDA RD grant. The car has been ordered and it will be about 6-8 weeks before it will arrive.
- City Supervisor Houk advised that the contractor (Rognlin's) has been issued their Notice to Proceed on the Adams Street Project. They should be staging by August 16th and the project is estimated to take 35 days. This project is funded by the Transportation Improvement Board. (TIB). Councilor Hall asked for information about the sidewalk location in relationship to the Dollar General and City Supervisor Houk provided him with the details.
- City Supervisor Houk reported that the Water Treatment Plant upgrades are moving forward.
 Right now, the biggest issue is getting materials which is an issue everywhere.
- City Supervisor Houk explained that recently a main line burst and often when that happens it can shock the system, creating smaller leaks throughout the distribution side which is exactly what has happened. The crew has been busy fixing numerous smaller leaks since. The water loss to date is over 400,000 gallons.
- Clerk/Treasurer Roberts explained that there will be an ordinance on the August 23rd agenda renewing the city tax that is charged on utilities (water and sewer). The original ordinance was for two years and it expires at the end of 2021. The new ordinance does add an additional 1% to the 2% that is already being collected. She wanted the council to be aware of this so they had time to consider the changes. She explained that the additional 1% would amount to approximately \$1.37 per person, per month or about \$15,483.72 per year.

6. MAYOR'S REPORT

- ✓ Mayor Struck reported that the plans for *Come Play on Labor Day* is going strong! She has duck tickets, buttons and T-shirts for sale if anyone would like to purchase any of these items.
- Mayor Struck reported that someone has stolen more plants from the planters at the boat launch. She has asked the Parks Caretaker to remove all that is left and move them to Mary Rogers Pioneer Park. Next year she will only plant wild flowers or something that has no value and isn't worth stealing.

7. PUBLIC COMMENT – CURRENT AGENDA ITEMS – NONE

8. COUNCIL COMMENTS

- 4 Councilor Davis appreciated the Fireworks Survey. She really liked it.
- Gouncilor Hall also liked the survey. He also mentioned that he thought that the planters at the boat launch looked a little bare the last time he was down there.
- Councilor Hall thanked Police Chief Stigall for the work he has done on one of the properties that had over 20 cars on it. He noticed that/there are only two left. He appreciates that he has worked so well with the property owner. Nice job!
- Councilor Hall quoted Kathleen Parker, Columnist for The Washington Post "Simply put, one's refusal to be vaccinated makes life more dangerous for everyone else. Given that about half of America has taken its medicine without notable consequences, isn't it time to accept the facts?"
- Councilor Neve explained that the Kiwanis haven't decided whether or not they will be having their annual breakfast over Labor Day yet. They have their monthly meeting on Tuesday, August 10th and will let the Labor Day Committee know at that time.
- Councilor Neve "Mask it or Casket"
- Councilor Kuiken asked if there would still be fireworks over Labor Day and Mayor Struck advised that yes, they have been purchased but the South Bend Fire Chief may pull the plug on them because of how dry it is. It is just wait and see for now.

9. FUTURE AGENDA TOPICS - NONE

10. ADJOURNMENT	
	5:45 PM to meet again on Monday, August 23, 2021 for the next ng via Zoom unless otherwise announced.
	ATTEST:
Julie K. Struck	Dee Roberts
Mayor	Clerk/Treasurer

ORDINANCE #1562

AN ORDINANCE OF THE CITY OF SOUTH BEND, WASHINGTON AMENDING CHAPTER 3.10 OF THE SOUTH BEND MUNICIPAL CODE RELATING TO UTILITY EXCISE TAX

WHEREAS, the City Council of the City of South Bend has the statutory authority to impose a utility tax on utilities located within city boundaries, and

WHEREAS, the City of South Bend has a water and sewer utility collection program, now therefore,

THE CITY COUNCIL OF THE CITY OF SOUTH BEND, WASHINGTON DO ORDAIN:

Section 3.10.045 – Rates and Measure of Tax Enumerated shall be *amended* to read as follows:

Upon any person engaging or carrying on the business of collecting and treating sewerage and water the tax with respect to such business shall be equal to twelve percent (12%) of the total gross revenue from business and residential services and or sale in the City of South Bend. This tax shall be in effect from January 1, 2022 through December 31, 2023.

INTRODUCED this 23rd day of August, 2021 **AND PASSED** on the 13th day of September, 2021 by the following vote:

Ayes –	Noes –	Absent –
Julie K Struck, Mayor		
AUTHENTICATED BY:	111-y-11-4	
Dee Roberts, Clerk/Treasu	rer	

Publish: 09/23/2021

ORDINANCE #1563

AN ORDINANCE ADDING NEW SECTIONS TO TITLE 15 RELATING TO THE PARKING OF RECREATIONAL VEHICLES AND BOATS AND THE SITING OF CARGO CONTAINERS AND SEMITRAILERS; AND AMENDING SBMC 15:08:040 RELATING TO TEMPORARY USE PERMITS

WHEREAS, the City of South Bend plans under Growth Management Act (GMA), Chapter 36.7A of the Revised Code of Washington (RCW); and

WHEREAS, the City of South Bend adopted a Comprehensive Plan that establishes goals and policies for land uses within residential and commercial districts consistent with the GMA; and

WHEREAS, the City of South Bend implements the Comprehensive Plan through Title 15, Unified Development Code, of the South Bend Municipal Code (SBMC); and

WHEREAS, the City requested the Planning Commission to study issues relating to the parking of recreational vehicles and boats on public and private property, the siting of cargo and shipping containers in the Neighborhood and the Downtown and Commercial Districts, and temporary use permits under SBMC 15.08.040; and

WHEREAS, the Planning Commission held public workshops to evaluate the request and develop a draft ordinance; and

WHEREAS, the City provided notice of an open record public hearing before the Planning Commission in accordance with Chapter 15.08 SBMC on the draft ordinance; and

WHEREAS, the Planning Commission held the open record public hearing on June 10, 2021 and received no public comment; and

WHEREAS, the City conducted environmental review of the proposed amendment pursuant to the State Environmental Policy Act and received no comment; and

WHEREAS, the Planning Commission adopted a recommendation finding that the proposed amendments were consistent with the comprehensive plan and serve the public interest;

WHEREAS, the City Council reviewed and adopted the recommendation of the Planning Commission on June 28, 2021; and

WHEREAS, the City filed the Notice of Intent to Adopt with the State of Washington to initiate the state agency review process on June 29, 2021 with the Department of Commerce issuing a finding of consistency on July 13, 2021, now therefore,

THE CITY COUNCIL OF THE CITY OF SOUTH BEND, WASHINGTON DO ORDAIN:

Section 1. Amend SBMC 15.04.020 to add the following definitions:

- A. "Boat" means any commercial or recreational watercraft used for transport over water and propelled by rowing, sails, and/or motor.
- B. "Cargo shipping container" means a standardized, reusable portable vessel originally designed for use in intercontinental traffic of freight and designed to be mounted on a rail car, truck, or ship.
- C. "Semitrailer" means a vehicle without motive power designed to be drawn by a vehicle, motor vehicle, or truck tractor and so constructed that an appreciable part of its weight and that of its load rests upon and is carried by such other vehicle, motor vehicle, or truck tractor. [RCW 46.04.530]

Section 2. Add the following new section to Chapter 15.20 SBMC: Cargo Shipping Containers and Semitrailers

- A. Cargo shipping containers and semitrailers are not an allowed use within the Neighborhood and Environmental Protection Districts except as follows:
 - 1. A property owner may obtain a temporary use permit for one or more cargo shipping containers or semitrailers when used for a construction project that has a building permit pursuant to SBMC 15.84.030.
 - 2. Portable containers used to facilitate moving may locate on private property for up to 14 days and up to 30 days with a temporary use permit.
- B. Cargo shipping containers and semitrailers without applicable Department of Transportation licenses are a permitted use in the Downtown and Commercial District under the following conditions:
 - 1. A property owner may obtain a temporary use permit for one or more cargo shipping containers or semitrailers when used for a construction project that has a building permit pursuant to SBMC 15.84.030.
 - 2. A property owner may permanently place a cargo shipping container on a parcel for use as a storage unit if:
 - a. Screened from public visibility from the right-of-way or the Willapa River by site-obscuring fencing or landscaping approved by the City Supervisor;
 - b. Located no closer than 10 feet from any property line; and
 - c. In compliance with all building code provisions related to accessory buildings.
- C. Placing a cargo shipping container or a semitrailer without applicable Department of Transportation licenses on a city street or right-of-way is not allowed.
- D. Look-alike shipping container buildings or metal buildings marketed as "containers" or "portable storage units" are regulated as cargo shipping containers under this section.

Section 3. Add the following new section to Chapter 15.20 SBMC: Parking of Recreational Vehicles and Boats

- A. No person shall park any recreational vehicle or boat upon the improved or unimproved portion of any street, alley, public right-of-way, or publicly owned parking lot for more than twenty-four (24) hours with the following exceptions:
 - 1. Temporary parking for the purpose of loading or unloading;
 - 2. Use of the boat launch and parking area pursuant to SBMC 12.20.065(B); and
 - 3. The City Supervisor has issued a temporary use permit pursuant to SBMC 15.08.040 and the permit is clearly visible from the public right-of-way.
- B. In no event shall power cords, extension cords, garden hoses, or other like devices extend from any recreational vehicle or boat across the public right-of-way or sidewalk to a residential dwelling or like source.
- C. The city of South Bend will not be responsible for any loss or damage caused to any recreational vehicle or boat parked upon the improved or unimproved portion of any street, alley, public right-of-way, or publicly owned parking lot.

Temporary occupation of a single recreational vehicle on private property may be allowed for up to 14 days without a temporary use permit and up to 30 days upon the issuance of a temporary use permit. The City Supervisor may extend the period of the temporary use permit if the occupant of the recreational vehicle has a city building permit pursuant to SBMC 15.84.030 for the purpose of constructing or repairing a residence on property owned by that occupant.

Section 4. Amend South Bend Municipal Code Section 15.08.040 as follows:

- A. Delete temporary use permits as a Type 2 Project Permit Application under Section 15.08.040(B) 1.
- B. Add temporary use permits as Type 1 Project Permit Application under Section 15.08.040(A) 1.

Section 5. Severability

If any provision of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 6. Effective Date

This Ordinance shall be in full force and effect five days from and after its passage, approval, and publication in the manner required by law.

by the following vote:			
Ayes –	Noes –	Absent –	
Julie K Struck, Mayor			
AUTHENTICATED BY: Dee Roberts, Clerk/Treasurer			

INTRODUCED this 23rd day of August, 2021 AND PASSED on the 13th day of September, 2021

Publish: 09/23/2021

A PERSONAL SERVICES AGREEMENT Between CITY OF SOUTH BEND, WASHINGTON and CREATIVE COMMUNITY SOLUTIONS, INC.

THIS AGREEMENT is made and entered into by and between CITY OF SOUTH BEND, WASHINGTON, herein referred to as the "CITY" and Creative Community Solutions (2203 Overhulse Road NW, Olympia, WA 98502), herein referred to as "CONTRACTOR."

IT IS THE PURPOSE OF THIS AGREEMENT to contract with CONTRACTOR to assist the CITY in its periodic update of the City of South Bend Shoreline Master Program (SMP).

THEREFORE, IT IS MUTUALLY AGREED THAT the following terms and conditions shall govern this contract, including but not limited to the specific tasks, deliverables and costs set forth below:

Section 1. Statement of Work

CONTRACTOR shall carry out the Scope of Work attached hereto as Attachment "A" and fully incorporated into this Agreement by this reference.

Section 2. Period of Performance

Subject to the express provisions of this Agreement, the period of performance of this Agreement shall commence as of the date of execution by both parties and shall expire on February 1, 2022, but such period may be modified or extended by mutual agreement.

Section 3. Payment

The CITY shall reimburse the CONTRACTOR in accordance with the Fee Schedule in Attachment "A."

The CONTRACTOR shall provide the CITY with an itemized list of activities with each invoice.

Billing Procedures and Payment

The CITY will pay CONTRACTOR upon acceptance of services provided and receipt of properly completed invoices with backup documentation, which shall be submitted to the CITY not more often than monthly.

The invoices shall describe and document, to the CITY'S satisfaction, a description of the work performed. If expenses are invoiced, CONTRACTOR shall provide a detailed breakdown of each type of expense.

Payment shall be considered timely if made by the CITY within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The CITY may, in its sole discretion, terminate this Contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this Contract.

Section 4. Contract Management

The respective Contract Managers for the Parties shall be the contact persons for all communications and billings regarding the performance of this Contract. Each Party shall promptly notify the other Party of a change in the Contract Manager, which change shall become effective upon compliance with the notice provisions of this Contract.

Contract Manager for CONTRACTOR is:	Contract Manager for CITY is:
John M. Kliem, President	Dennis Houk, City Supervisor
Creative Community Solutions, Inc.	City of South Bend
2203 Overhulse Road NW	P.O. Box 9
Olympia, WA 98502	South Bend, WA 98586
Phone: (360) 866-9325	Phone: (360) 875-5571
E-mail address: <u>jmkliem@comcast.net</u>	E-mall address: <u>dennis.houk@southbend-wa.gov</u>

GENERAL TERMS AND CONDITIONS

- Assignment and Subcontracting: No portion of this Contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the CITY.
- 2. Independent CONTRACTOR: The CONTRACTOR's services shall be furnished by the CONTRACTOR as an independent contractor and nothing contained herein or in this Contract shall be construed to create a relationship of employer-employee or master-servant, but all services performed shall be performed by the CONTRACTOR as an independent contractor.

The CONTRACTOR acknowledges that the entire compensation for any work request or order shall be specified within said work request or order, and the CONTRACTOR, its agents, officers, employees or subcontractors, are not entitled to any CITY benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to CITY employees.

CONTRACTOR will defend, indemnify and hold harmless the CITY, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph by the CONTRACTOR.

- 3. **No Guarantee of Employment:** The performance of all or part of this Contract by the CONTRACTOR shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the CONTRACTOR or any employee of the CONTRACTOR or any subcontractor or any employee of any subcontractor in the present or in the future.
- 4. <u>Taxes:</u> The CONTRACTOR understands and acknowledges that the CITY will not withhold Federal or State income taxes. Where required by State or Federal law, the CONTRACTOR authorizes the CITY to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the CONTRACTOR will be reported to the Internal Revenue service at the end of the calendar year in accordance with applicable IRS regulations. It is the responsibility of the CONTRACTOR to make the necessary estimated tax payments throughout the year, if any, and the CONTRACTOR is solely liable for any tax obligation arising from the CONTRACTOR's performance of this Contract. The CONTRACTOR hereby agrees to indemnify the CITY against any demand to pay taxes on compensation earned pursuant to this Contract.

The CITY will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The CONTRACTOR must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the CONTRACTOR's gross or net income, or personal property to which the CITY does not hold title. The CITY is exempt from Federal Excise Tax.

- 5. <u>Regulations and Requirement:</u> This agreement shall be subject to all applicable laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington.
- 6. Right To Review: This Agreement is subject to review by any Federal or State auditor. The CITY or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the CITY. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by CITY agents or employees, inspection of all records or other materials which the CITY deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under such Agreement. When necessary, CONTRACTOR shall have an affirmative duty to notify such service recipients of this right to review. The CONTRACTOR shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after agreement termination, and shall make them available for such review, within Pacific County, State of Washington, upon request.
- 7. <u>Modifications:</u> Either party may request changes in this Agreement. Any and all agreed modifications shall be in writing, signed by each of the Parties, and effective on the latter date of execution by the respective Parties.

8. Termination for Default: If the CONTRACTOR defaults by failing to perform any of the obligations of this Agreement or becomes insolvent or is declared bankrupt or commits an act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the CITY may, by depositing written notice to the CONTRACTOR in the U. S. Mail, postage prepaid, terminate the Agreement, and at the CITY's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the CONTRACTOR shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the CITY resulting from such default(s) shall be deducted from any money due or coming due to the CONTRACTOR. The CONTRACTOR shall bear any reasonable extra expenses incurred by the CITY in completing the work, including all increased costs for completing the work, and all damage sustained, or which may by sustained by the CITY by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the CONTRACTOR was not in default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

- 9. Termination or Suspension for Public Convenience: The CITY may terminate this Agreement in whole or in part whenever such termination or suspension is in the interests of the CITY. Whenever the Agreement is terminated or suspended in accordance with this paragraph, the CONTRACTOR shall be entitled to payment for actual work performed at unit agreement prices for completed items of work. An equitable adjustment in the agreement price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination or suspension of such Agreement by the CITY at any time during the term, whether for default or convenience, shall not constitute a breach of agreement by the CITY. The CITY may reactivate the Agreement in whole or in part following suspension upon depositing written notice of reactivation to CONTRACTOR in the U.S. mail, said reactivation becoming effective ten (10) days following mailing.
- 10. <u>Defense & Indemnity Agreement:</u> The CONTRACTOR agrees to defend, indemnify and save harmless the CITY, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the CITY, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the CONTRACTOR, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees. It is further provided that no liability shall attach to the CITY by reason of entering into any contract, except as expressly provided herein or as otherwise required by operation of law upon political subdivisions of the State of Washington.

- 11. <u>Industrial Insurance Waiver:</u> With respect to the performance of this Agreement and as to claims against the CITY, its officers, agents and employees, the CONTRACTOR expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees, and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the CONTRACTOR. This waiver is mutually negotiated by the parties to this Agreement as part of the valuable consideration of the present agreement.
- 12. <u>Insurance Requirements</u>: The contractor shall, at the CONTRACTOR's own expense, maintain, with an insurance carrier licensed to do business in the State of Washington, with minimum coverage as outlined below, commercial automobile liability insurance, and either commercial general liability insurance, or, if any services required by the contractor must be performed by persons licensed by the State of Washington, professional liability insurance:

Commercial General Liability Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 each occurrence OR combines single limit coverage of \$5,000,000 with not greater than a \$1,000 deductible.

The CITY shall be named as additionally insured on all required policies and such insurance as is carried by the CONTRACTOR shall be primary and non-contributory over any insurance carried by the CITY. The contractor shall provide a certificate of insurance to be approved by the CITY Risk Manager prior to agreement executions, which shall be attached to the agreement.

The CITY shall have no obligation to report occurrences unless a claim is filed with the CITY; nor shall CITY have an obligation to pay premiums.

- 13. <u>Venue and Choice of Law:</u> In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Pacific. This Agreement shall be governed by the laws of the State of Washington. Except as otherwise stated herein, each Party shall be responsible for its own attorney's fees.
- 14. <u>Withholding Payment:</u> In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Agreement, and said failure has not been cured within the times set forth in this Agreement, then the CiTY may, upon written notice, withhold all moneys due and payable to CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated.
- 15. <u>Future Non-Allocation of Funds:</u> If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the CITY will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the CITY in the event this provision applies.

- 16. CONTRACTOR Commitments, Warranties and Representations: Any written Commitment received from the CONTRACTOR concerning this Agreement shall be binding upon the CONTRACTOR, unless otherwise specifically provided herein with reference to this paragraph. Failure of the CONTRACTOR to fulfill such a commitment in accordance with industry standards shall render the CONTRACTOR liable for damages to the CITY. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.
- 17. Patent/Copyright Infringement: CONTRACTOR will defend and indemnify the CITY from any claimed action, cause or demand brought against the CITY; to the extent such action is based on the claim that information supplied by the CONTRACTOR infringes any patent or copyright. The CONTRACTOR will pay those costs and damages attributable to any such claims that are finally awarded against the CITY in any action. Such defense and payments are conditioned upon the following:

That CONTRACTOR shall be notified promptly in writing by CITY of any notice of such claim.

CONTRACTOR shall have the right, hereunder, at its option and expense, to obtain for the CITY the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the CITY.

18. Disputes:

General

Differences between the CONTRACTOR and the CITY arising under and by virtue of this Agreement shall be brought to the attention of the CITY at the earliest possible time in order that such matters may be settled, or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, ruling, instructions, and decisions of the CITY shall be final and conclusive.

Notice of Potential Claims

The CONTRACTOR shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the CITY, or (2) the happening of any event or occurrence, unless the CONTRACTOR has given the CITY a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the CITY. The written Notice of Potential Claim shall set forth the reasons for which the CONTRACTOR believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. CONTRACTOR shall keep full and completed daily records of the work performed, labor and material used, and all costs and additional time

claimed to be additional.

Detailed Claim

The CONTRACTOR shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the CITY, the CONTRACTOR has given the CITY a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

- 19. Ownership of Items Produced: All writings, programs, data, public records or other materials prepared by the CONTRACTOR and/or its CONTRACTORs or subcontractors, in connection with the performance of any Agreement shall be the sole and absolute property of the CITY. The CONTRACTOR is not liable for any reuse of these materials except as it relates to this project.
- 20. <u>Confidentiality:</u> The CONTRACTOR, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the CITY or acquired by the CONTRACTOR in performance of any Agreement, except upon the prior written consent of the Contract Manager for the CITY or an order entered by a court after having acquired jurisdiction over the CITY. CONTRACTOR shall immediately give to the CITY notice of any judicial proceeding seeking disclosure of such information. CONTRACTOR shall indemnify and hold harmless the CITY, its officials, agents or employees from all loss or expense, including but not limited to settlements, judgments, setoff's, attorney's fees and costs resulting from contractor's breach of this provision.
- 21. <u>Notice:</u> Except as set forth elsewhere in this Agreement and for all purposes under said Agreement, except service of process, notice shall be given by the CONTRACTOR to the CITY's Contract Manager. Notice to the CONTRACTOR for all purposes under this Agreement shall be given to the CONTRACTOR's at the address of record supplied by the CONTRACTOR. Notice may be given by delivery or by depositing in the U.S. mail, first class, postage prepaid.
- 22. **Severability:** If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of said Agreement are declared severable.
- 23. <u>Waiver:</u> Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of thereof shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

- 24. <u>Entire Agreement and Interpretation:</u> This written Agreement represents the entire agreement for professional services between the Parties and supersedes any prior oral statements, discussions or understanding between the Parties.
- 25. <u>Agreement Management:</u> The Contract Manager for each of the Parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of August 2021.

This Contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions, or understandings.

CONTRACTOR	CITY	
John M. Kliem, President	Julie Struck, Mayor	
Creative Community Solutions, Inc.	City of South Bend	
2203 Overhulse Road NW	P.O. Box 9	
Olympia, WA 98502	South Bend, WA 98586	
(360) 866-9325	(360) 875-5571	
Creative Community Solutions, Inc.	City of South Bend	
Ву:	By:	

ATTACHMENT "A" SCOPE OF WORK

This CONTRACTOR'S scope of work will complete Tasks 3 through 5 of the CITY's Periodic Review of its Shoreline Master Program as described in its grant contract with the Washington State Department of Ecology.

This scope also incorporates the Optional Joint Review Process per WAC 173-26-104.

Task 3: Public Participation

- A. <u>Prepare and disseminate public participation plan</u>. The CONTRACTOR will prepare a document that will describe the public participation activities for the Periodic Review of the SMP. The CITY will post this plan on its website.
- B. <u>Conduct public participation activities</u>. The CONTRACTOR will deliver the following public participation activities prior to the public review process under Task 5:
 - a. Prepare a Periodic Review comment form and informational material about the SMP Periodic Review for the CITY to post on its website;
 - b. Present an informational meeting before the Planning Commission via Zoom about the SMP Periodic Review; and
 - c. Distribute the Periodic Review comment form sheet to the public.

Task 4: Review of Shoreline Master Program and Preparing Draft Revisions

- A. Review the SMP to determine if revisions are necessary. The CONTRACTOR will conduct the following activities.
 - a. Review and complete the Periodic Review checklist; and
 - b. Review and document the current SMP for consistency with the Comprehensive Plan and development regulations.
- B. <u>Draft Revised SMP amendments</u>, including other consistency requirements.
 - a. Prepare a draft SMP based on the checklist consistency review and results from the Periodic Review comment form; and
 - b. Draft other potential changes to ensure SMP consistency with comprehensive plan and development regulations.

Task 5: Final Draft SMP

- A. Conduct Public Review Process.
 - a. Assist CITY in preparing Notice of Intent to Adopt SMP;
 - b. Provide SEPA checklist to CITY for threshold determination;
 - c. Assist the CITY in posting complete draft SMP, summary, and checklist on its website;
 - d. Assist the CITY in scheduling a joint public hearing with Ecology on the draft document before the Planning Commission; and
 - e. Present a draft SMP and other update requirements to the Planning Commission at CITY-Ecology joint public hearing via Zoom meeting.
- B. <u>Ecology Determination of Consistency</u>. Submit draft SMP and related documents to Ecology for initial determination of consistency. Assist CITY in coordinating with Ecology any required or recommended changes.
- C. <u>Local Adoption</u>. Provide the CITY with a draft ordinance for use in local adoption.

CITY Responsibilities

The CITY will be responsible for Tasks 1 and 2 under the CITY/Ecology grant and for printing expenses related to this scope of work.

If the CITY requires the CONTRACTOR'S presence to complete work related to this scope of work within the City of South Bend, the CITY will reimburse CONTRACTOR at an hourly rate of \$120 per hour for travel time and the current IRS rate for mileage.

Fee for Completing Scope of Work

The CONTRACTOR estimates a total of 96 hours billed at \$120.00 per hour for completing the aforesaid scope of work. CONTRACTOR will invoice the CITY upon completion of the following tasks:

Task 3: Public Participation

Α.	Preparation of	Public Part	icipation Pl	lan	\$600.00

B. Conducting Public Participation Activities......\$1,320.00

Task 4: Review and Revise Shoreline Master Program

A. Review SMP for determine consistency	\$2,880.00
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B. Draft revised SMP......\$3,360.00

Task 5: Final Draft

Α.	Conduct Public Review Process	\$1,800.00
	Ecology Determination of Consistency	
C.	Local Adoption	\$360.00